IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6028 OF 2006

M/s.Advance Industrial Services .. Petitioner.
Vs.
M/s.Sunako Enterprises .. Respondents.

Mr.P.B.Shah for the petitioner.
Mr.Vachan Bodke i/b M/s.Chitnis Vaithy & Co. for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 9TH OCTOBER, 2006

P.C.:

. Heard learned counsel for the petitioner and the respondents.

2. Rule, returnable forthwith. By consent of the parties taken up for final hearing. Mr.Bodke, learned counsel waives service for the respondents.

3. The order dated 24.7.2006 passed by the 6th Adhoc Additional District Judge, Pune on Miscellaneous Civil Application No.191 of 2006 filed under Order 41 Rule 19 of the Code of Civil Procedure is under challenge in the present writ petition. By that application the petitioner had prayed for restoration of Civil Appeal No.787 of 2000 which had been dismissed for default on 21.12.2005. The application no.191 of 2006 was rejected solely on the ground that the separate application seeking condonation of delay of 81 days in filing the said application for

restoration of the appeal was not filed. I perused the order and other material placed before me. The court below has taken hypertechnical view. The learned counsel appearing for the parties have fairly stated that I need not record the reasons for allowing this writ petition and have fairly agreed for the following order:

(a) The order dated 24.7.2006 passed on miscellaneous civil application no.191 of 2006 rejecting the application filed under Order 41 Rule 18 of the CPC is set aside.

(b) By consent of the parties delay in filing the application for restoration of the appeal is condoned. Civil appeal no.787 of 2000 filed by the petitioner stands restored to file. The appeal court shall decide the said appeal as expeditiously as possible and preferrably within a period of six months from today. The petitioner to produce a copy of this order before the appeal court within two weeks from today.

(c) The amount deposited by the petitioner in pursuance of the order passed by this court earlier shall remain deposited till the disposal of the appeal. The petitioner shall keep the Bank guarantee executed by them, alive till the disposal of the appeal.

. With these observations the Rule is disposed of.

(D.B.Bhosale, J.)